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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PIONEER KABUSHIKI KAISHA d/b/a
PIONEER CORPORATION,

Opposer,

v.

NISSEI SANGYO AMERICA, LTD. n/k/a
HITACHI HIGH TECHNOLOGIES AMERICA,
INC.,

Applicant.

Opposition No. 125,458

Mark: SUPERSCAN ELITE

Serial No.: 76/208,230

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05-28-2004

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APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO
MOTION FOR PROTECTIVE ORDER

Applicant, Hitachi High Technologies America, Inc. ("Applicant" or "HHTA") filed a Motion for Protective Order dated April 21, 2004, seeking to prevent Opposer, Pioneer Corporation ("Opposer" or "Pioneer") from continuing to engage in its campaign of vexatious and excessive discovery. Pioneer has filed an opposition to such motion for protective order, and Applicant submits the following in reply to that opposition:

1. In its reply to HHTA's motion, Pioneer wrongfully tries to shift the blame for the present discovery dispute from itself to HHTA by stating that "Applicant has resisted discovery from Opposer." (*Motion*, p. 1) Such a statement could not be further from the truth, as HHTA has provided responses to an overwhelming number of requests propounded by Pioneer. Early in the litigation it produced hundreds of boxes of documents in response to a document request of little or no relevance. More recently, it has produced over 500 more pages related to HHTA's intent to use SUPERSCAN ELITE. Pioneer has taken depositions of high-ranking HHTA employees, one of whom will soon be produced for a second day of deposition testimony, as well as several third-party depositions. Notwithstanding Applicant's cooperation in the process of discovery in this matter, Pioneer attempts to unreasonably and vexatiously multiply the discovery proceedings by seeking

discovery depositions of six additional employees of HHTA whose relevant knowledge is marginal at best.

2. Pioneer claims that applicant has failed to establish good cause for the entry of a protective order. Good cause is shown, however, from simply looking at the record of this case and by considering the purpose for which the present depositions are sought. These proposed depositions and the e-mails cited in Pioneer's response relate to Pioneer's claim that HHTA has no bona fide intent to use the SUPERSCAN ELITE mark. This claim borders on the frivolous and is refuted by the documents themselves, which clearly demonstrate Applicant's intent to use the mark. For Pioneer to demand six depositions on such a claim lacks any sense of proportionality, and can serve no legitimate purpose. It is harassment pure and simple. Pioneer's scorched-earth discovery tactics are unjustified in light of the scope of the facts in question.¹

3. The recently produced documents as well as previously produced documents deal with HHTA's intent to use the SUPERSCAN family of marks, including SUPERSCAN ELITE. At Mr. Levans' prior deposition, counsel questioned the witness extensively on HHTA's intent to use those marks. Mr. Levans (HHTA's Vice-President and General Manager of the Electronic Products Division) testified to that intent and responded to questions about several e-mails demonstrating that intent. (See excerpts attached as Exhibit 1). The recently produced documents also demonstrate HHTA's intent to use the mark. Mr. Levans will be available to testify about the recently produced documents.

¹ Pioneer complains (p. 3) that HHTA responded to the fourth request for production with more than 100 documents "that were not previously produced." It implies that HHTA withheld those documents from the previous productions. However, the documents produced in response to the fourth document request did not exist at the time of the prior document production. They were created in late 2003 and early 2004.

4. The named witnesses in Pioneer's most recent deposition notices do not have information relevant to the present proceedings which could not have already been obtained from Mr. Levans' prior deposition or be obtained in his upcoming second deposition.

5. Opposer claims (p. 1) that the six witnesses sought to be deposed were "intimately involved in the decisions regarding creation, use, pricing, marketing and distribution of the subject marks." In making this assertion, Opposer relies on copies of emails which HHTA has produced. Copies of these documents appear in Opposer's Exhibit E. An examination of the produced emails, however, does not show that these individuals possess any significant, non-duplicative information which would give rise to a need for Pioneer to take their depositions.

6. Pioneer exaggerates the potential importance of the witnesses other than Mr. Levans. For example, it cites (p. 4) three emails authored by Mr. Duda at Bates #H 22, 402-405, and 443-446.² His authorship in these three documents consisted of the following:

"Diana, here is the information that you requested. The brand would be 'SuperScan' or possibly 'SuperScan Elite.' Please see attached files. (Bates #22).

"Hidaka-san, see attached carton box design for placement of labels." (Bates #402).

and, in an email to Mr. Levans attaching some logo artwork:

"Please review and approve." (Bates # H 443).

² All documents referred to can be found in Opposer's Exhibit E.

His primary involvement appears to have been obtaining artwork for SUPERSCAN logos from a graphic design. Pioneer's brief identifies these documents, but never explains why they warrant a deposition or how any of this relates to its case. It does not state how these support a claim of no bona fide intent. On the contrary, Pioneer's own brief seems to acknowledge HHTA's bona fide intent to use when it states (p. 4) "in e-mails from September and October, 2003, Mr. Duda was heavily involved in sales and marketing activity involving SUPERSCAN and SUPERSCAN ELITE." One is at a loss to understand why six different employees should be deposed on this issue, when Pioneer admits that there were sales and marketing activities which are clearly indicative of an intent to use.

7. Pioneer claims that Mr. Battaglia was "heavily involved" with the SUPERSCAN and SUPERSCAN ELITE marks (p. 5), but fails to point to even one document authored by Battaglia in all the documents produced. Similarly, the name of Mr. Hakai appears exactly once in the 500-plus pages of documents produced, in an organization chart. (Bates # H 32). There is no reference to SUPERSCAN ELITE in connection with his name and no indication that as manager of the engineering department he had anything to do with SUPERSCAN ELITE products.

8. Pioneer also wants to depose Mr. Kobayashi, who was Senior Vice-President and at the top of the organization chart (Bates # H 32). (Mr. Kobayashi has since been promoted to Executive Vice-President and has become a member of HHTA's Board of Directors). Pioneer points to just three e-mails on which Mr. Kobayashi was copied (along with numerous other recipients) (See p. 7, citing H 11-12, 129, and 386). This hardly justifies deposing a senior corporate officer. It is at best a fishing expedition, and at worst, harassment. *Evans v. Allstate Insurance Co.*, 216 F.R.D.

515 518-19 (N.D. Okla. 2003) (granting protective order prohibiting depositions of senior corporate officers, stating “the oral deposition of a high level corporate executive should not be freely granted when the subject of the deposition will be only remotely relevant to the issues of the case”). See also, Folwell v. Hernandez, 210 F.R.D. 169, 173-74 (M.D.N.C. 2002) (“Rule 26(b) gives the court power to regulate harassing or burdensome depositions, and . . . unless a high level executive has a unique personal knowledge about the controversy, the court should regulate the discovery process to avoid oppression, inconvenience, and burden to the corporation and to the executive”).

9. Mr. Misu, on the other hand, is at the bottom of the organization chart (Bates # H32). The documents cited by Pioneer (p. 7) show him forwarding SUPERSCAN quotes to customers and addressing cost and pricing issues that have little or nothing to do with the trademark issues in this case. Very few of the documents cited were authored by Mr. Misu.

10. Mr. Hidaka is the deputy manager of the Electronic Products Division, reporting directly to Mr. Levans. Pioneer has pointed to nothing to indicate that his knowledge and prospective testimony is anything other than duplicative of Mr. Levans’.

11. These emails are of no particular relevance to the likelihood of confusion issue for this intent to use application. What the e-mails do show is that the individuals (except for Mr. Kobayashi) worked under the supervision of Michael Levans, and would not have made any decisions regarding the SUPERSCAN ELITE mark without first seeking and obtaining his approval. Mr. Kobayashi, a senior executive, was only peripherally involved. The key executive and decision-maker is Mr. Levans.

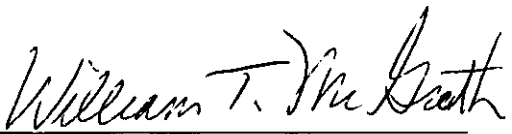
12. Pioneer's argument that Applicant has not shown good cause for obtaining a protective order, mischaracterizes HHTA's objections to the present discovery requests. For example, in the case of *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482 (5th Cir. 1990), the court denied a request for a protective order where the responding party made essentially no effort to respond to any propounded discovery requests, and instead stated merely summary and cursory objections. HHTA's conduct in this litigation has been quite different. HHTA has made substantial efforts all along to comply with Pioneer's overwhelming discovery requests. It has provided detailed answers to 65 interrogatories, answered 41 requests to admit, responded to 61 categories of production requests, provided hundreds of documents, and has made Mr. Levans available for two full days of deposition, both individually and as HHTA's 30(b)(6) designee. HHTA has also produced Mr. Stephen Snoke, HHTA's Executive Vice President and General Counsel for a full day of deposition. HHTA has been cooperative and tolerant with Pioneer's requests. But the current demand for six wholly unnecessary depositions crosses the line of appropriate discovery into the realm of harassment and vexatious litigation.

13. Opposer's conduct, in unnecessarily protracting the discovery in this matter, has caused these proceedings to be unreasonably multiplied. Pioneer has put forth no valid reason why it needs the depositions of the additional witnesses, and HHTA has shown good cause for the entry of an order prohibiting the depositions from taking place.

WHEREFORE, Applicant requests that the Board enter the prayed-for order precluding the additional six depositions.

Respectfully submitted,

Date: **May 28, 2004**

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1 person with respect to the sales of computer monitors
 2 and displays that might bear the SuperScan Elite mark?
 3 A Yes.
 4 Q Now, does HHTA have an intention to sell any
 5 type of consumer electronics product under the SuperScan
 6 Elite name?
 7 A Yes.
 8 Q And what exactly is that intention?
 9 A Well, it's a broad question. We intend to
 10 market SuperScan as our family brand as the tonnage type
 11 of mid-level product. And we intend to co-brand that
 12 family mark with SuperScan Elite, tying into that
 13 certain step-up or premium features to the product.
 14 So if I understood your question correctly,
 15 basically, we are in the process of building a two-step
 16 program under the family brand of SuperScan and with a
 17 step-up product line called SuperScan Elite.
 18 Q And this product line -- Well, let's talk about
 19 the sort of general SuperScan product line. What would
 20 the general SuperScan product line consist of? In other
 21 words, what products would be sold under the SuperScan
 22 name?
 23 A All the products I listed before.
 24 Q So projection televisions?

an

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EXHIBIT

tabbies

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7

<p>1 A Yes.</p> <p>2 Q Direct TVs?</p> <p>3 A Direct view TVs, yes.</p> <p>4 Q Direct view TVs, plasma screens?</p> <p>5 A Yes.</p> <p>6 Q DVD players?</p> <p>7 A Yes.</p> <p>8 Q Combination television/DVD players?</p> <p>9 A Yes.</p> <p>10 Q Combination television/VCR players?</p> <p>11 A Yes.</p> <p>12 Q Stand-alone DVD players?</p> <p>13 A Yes.</p> <p>14 Q VCRs?</p> <p>15 A Yes.</p> <p>16 Q Any other product that I haven't named that you</p> <p>17 would sell under the SuperScan list of products that</p> <p>18 we've gone over?</p> <p>19 A LCD TV.</p> <p>20 Q Any other products that we haven't discussed?</p> <p>21 A Possibly. We sell -- we are a trading company,</p> <p>22 sales organization. Many products and/or accessories</p> <p>23 could be considered, yes.</p> <p>24 Q Can you give me any kind of idea of what other</p> <p style="text-align: right;">26</p>	<p>1 individual target customers. And within those</p> <p>2 individual target customers we have separate I'll call</p> <p>3 it give and take business discussions with those key</p> <p>4 customers with respect to the SuperScan family brand of</p> <p>5 names.</p> <p>6 Q But my question, I guess, is more specific. I</p> <p>7 mean, have you had any discussions -- well, let me back</p> <p>8 up and follow up on your answer.</p> <p>9 With respect to individual target customers,</p> <p>10 have you had any discussion with any individual target</p> <p>11 customers about selling the SuperScan name for a type of</p> <p>12 product to them?</p> <p>13 A Yes.</p> <p>14 Q And when did those discussions first take place?</p> <p>15 A Same time period, the end of 2001, beginning of</p> <p>16 2002.</p> <p>17 Q Was that after November of 2001?</p> <p>18 A For specific customers, yes.</p> <p>19 Q When was the first time you talked to any</p> <p>20 individual customer about selling the SuperScan name</p> <p>21 branded product to them?</p> <p>22 A In the electronic products division, it goes</p> <p>23 back farther than that because, as I stated earlier, we</p> <p>24 sold that 13-inch TV under the SuperScan brand.</p> <p style="text-align: right;">28</p>
<p>1 products or accessories that you're thinking about?</p> <p>2 A It could be separate tuners or satellite tuners</p> <p>3 or HDTV tuners, things like that.</p> <p>4 Q Would those be sold to other manufacturers or</p> <p>5 directly to consumers?</p> <p>6 A No, we would sell to retailers, national</p> <p>7 retailers.</p> <p>8 Q Who would, in turn, sell to consumers?</p> <p>9 A Correct.</p> <p>10 Q Now, with respect to the name SuperScan Elite,</p> <p>11 what specific products do you intend to sell under that</p> <p>12 name?</p> <p>13 A Well, as I said, it would be step-up versions of</p> <p>14 practically everything we've discussed today.</p> <p>15 Q So that would include all of the same products</p> <p>16 that you gave in your last answer?</p> <p>17 A Correct.</p> <p>18 Q And when was this decision to sell products</p> <p>19 under SuperScan Elite made?</p> <p>20 A Somewhere between the end of 2001 and mid 2002.</p> <p>21 Q And was there any documentation like a business</p> <p>22 plan or anything created out of this decision to</p> <p>23 revitalize or start using SuperScan Elite?</p> <p>24 A No business plan, per se. We have basically</p> <p style="text-align: right;">27</p>	<p>1 Q Did you ever have any -- Well, let me ask you</p> <p>2 this: Have you ever had any specific discussions with</p> <p>3 any specific customers about selling SuperScan Elite</p> <p>4 branded products?</p> <p>5 A Yes.</p> <p>6 Q And when did the discussion to any individual</p> <p>7 customer take place regarding selling SuperScan Elite</p> <p>8 branded product?</p> <p>9 A That would be the time frame I'm thinking of,</p> <p>10 the end of 2001 would be the first.</p> <p>11 Q And how many customers did you have this</p> <p>12 discussion with regarding selling the specific SuperScan</p> <p>13 Elite branded product?</p> <p>14 A Between that time and this date, at least two</p> <p>15 major national accounts.</p> <p>16 Q And did those discussions specifically involve</p> <p>17 the mark SuperScan Elite?</p> <p>18 A As well as SuperScan, yes.</p> <p>19 Q And have there been any contracts entered into</p> <p>20 with any customers regarding the sale of SuperScan Elite</p> <p>21 branded products?</p> <p>22 A Not today.</p> <p>23 Q So I take it there have just been discussions at</p> <p>24 this point, correct?</p> <p style="text-align: right;">29</p>

1 A More than discussions.
 2 Q What more than discussions have taken place?
 3 A Negotiations.
 4 Q Over pricing?
 5 A Yes.
 6 Q Quantity of merchandise?
 7 A Yes.
 8 Q Type of merchandise?
 9 A Yes.
 10 Q Distribution of merchandise?
 11 A Yes.
 12 Q So all the things necessary --
 13 A Yes.
 14 Q Well, let me finish my question.
 15 All the things necessary to make sales to
 16 national accounts?
 17 A Yes.
 18 Q So if I understand your testimony, there have
 19 been to date two national accounts that this has been
 20 discussed with, correct?
 21 A Yes.
 22 Q Now, would the sale of SuperScan Elite branded
 23 products be sold as a sort of OEM type of product? And
 24 when I say OEM, do you understand what I mean?

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1 A Yes. I understand what you mean by OEM. What's
 2 your question, though?
 3 Q My question was -- Let me restate it. Maybe
 4 there is a better way to put it.
 5 Is the sale, the potential sale of a SuperScan
 6 Elite branded product going to be sold to these national
 7 accounts as a house brand?
 8 A Possibly.
 9 Q But there has been no firm -- has there been a
 10 firm discussion about that?
 11 A Yes.
 12 Q And what is the result of that discussion?
 13 A It's ongoing.
 14 Q So there is no decision about that at this
 15 point?
 16 A No final decision, that's correct.
 17 Q Have there been any discussions from, say, 1998,
 18 I guess, to the present with any other customers about
 19 selling them a SuperScan Elite branded product?
 20 A In my division, in my division in electronic
 21 products division there may have been one or two others
 22 in addition to the two I'm mentioning that were
 23 investigated. But we decided to concentrate on the two
 24 major national retail accounts that I'm referring to.

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1 Q When were these two other accounts investigated?
 2 A During that same time frame.
 3 Q End of 2001 and 2002?
 4 A Yes.
 5 Q And was the result of that investigation that
 6 HHTA/NSA decided not to approach those two other
 7 accounts?
 8 A I would not say decided not to approach. We
 9 decided to focus on better opportunity.
 10 Q These other two accounts, did you ever have any
 11 discussions with them?
 12 A Yes.
 13 Q But nothing came out of those discussions as far
 14 as any kind of finalized agreement?
 15 A No.
 16 Q These other two accounts, are they retailers?
 17 A Yes.
 18 Q And are they smaller than the other two national
 19 accounts?
 20 A Yes.
 21 Q And that's one reason why you decided to focus
 22 on the larger accounts?
 23 A Yes.
 24 Q Now, did you have any planning meetings as you

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1 began this process at the end of 2001 regarding the
 2 marketing of SuperScan Elite?
 3 A Yes, we've had many meetings.
 4 Q And who have been present at these meetings?
 5 A Myself, my immediate sales staff, my counterpart
 6 sales staff from Tokyo, our parent company Hitachi High
 7 Technologies Corporation of Tokyo, and the customer's
 8 team, buying teams.
 9 Q So I take it you had essentially these joint
 10 meetings involving the persons you've indicated from the
 11 different companies, correct?
 12 A Yes. You wouldn't assume that it was all in one
 13 big meeting. These are maybe smaller group meetings
 14 over time, depending on the subject for that particular
 15 day or that category. It could be logistics, it could
 16 be the branding, it could be a cost issue, it could be
 17 servicing, all the things that go into creating a plan.
 18 Q Did that -- is there -- Are there any documents
 19 that came out of these meetings?
 20 A Other than meeting minutes and e-mails, yes.
 21 Q So, in other words, if I understand your answer,
 22 there were documents besides e-mails and meeting minutes
 23 that came out of these meetings, is that correct?
 24 A No, I'm saying that that would be the extent of

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1 "Q But as far as HHTA and NSA is
2 concerned, then I take it the only products
3 that you're aware of that have specifically
4 been sold with the SuperScan Elite mark
5 would be the 13-inch television and computer
6 displays generally?")

7 THE WITNESS: No, I didn't state that we sold a
8 13-inch TV under SuperScan Elite.

9 MR. SKOUSEN: Q So as far as SuperScan Elite is
10 concerned, there has never been a 13-inch television
11 that's been sold under that name, correct?

12 A That is correct.

13 Q And the only product that you're aware of that
14 has borne the SuperScan Elite mark would be computer
15 displays or monitors, correct?

16 A To the best of my knowledge, yes.

17 Q Now, with respect to the possible distribution
18 of a product bearing SuperScan Elite mark, what channels
19 of distribution might be used?

20 A National retailers.

21 Q Any other channels of distribution?

22 A Can you be more specific?

23 Q Well, I just -- I'm using that question in the
24 most general sense. I mean, what I'm really asking you

1 is this: Do you have any business plans to sell
2 SuperScan Elite products, in other words -- Let me
3 restate the question.

4 Do you have any business plans to sell products
5 bearing the SuperScan Elite mark to anyone else besides
6 national retailers?

7 A Not at this time.

8 Q Has there ever been any discussions about using
9 the SuperScan Elite mark for the sale of any product and
10 to any person at any time?

11 A Yes.

12 Q Okay. And have these persons been other than
13 retailers?

14 A Not at this time.

15 Q Well, let me just make sure I understand your
16 answer. So is your testimony that, you know, from 1999
17 to the present there has never been any discussion about
18 selling products bearing the SuperScan Elite mark to
19 anyone besides retailers?

20 A Correct.

21 Q And are you aware of any documents that relate
22 to the plans to sell SuperScan Elite products?

23 A Not other than the meeting reports or minutes
24 that I mentioned earlier.

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1 we had a vice-president over the entire company, no.
 2 MR. SKOUSEN: Q Well, was computer monitors and
 3 displays a separate division back prior to, say, March
 4 of 2000?
 5 A Yes.
 6 Q And could he have been the vice-president and
 7 general manager of that division?
 8 A Yes.
 9 MR. McGRATH: Objection, calls for speculation.
 10 MR. SKOUSEN: Q Have you ever heard of his name?
 11 A Yes, I've heard of Mr. Hagiwara. But at that
 12 time if he was a general manager, I was not directly
 13 involved with him because I was not a general manager.
 14 Q I see. Now, were you involved in any way in the
 15 decision to attempt to register SuperScan Elite as a
 16 trademark?
 17 A Yes.
 18 Q And what was your involvement in that process?
 19 A We requested and discussed with our company what
 20 was necessary to register that trademark.
 21 Q And did you make a decision to attempt to
 22 register it?
 23 A Yes.
 24 Q And I take it you instructed legal counsel to do

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1 that?
 2 A Yes.
 3 Q And that would have been Ms. Neal, is that
 4 right?
 5 A I deal with our in-house counsel only, Mr. Steve
 6 Snoke.
 7 Q I see. Did you ever instruct anyone to do a
 8 search to see whether that name was available?
 9 A Personally, no. That type of thing is left up
 10 to our counsel.
 11 Q And would that have been approximately in
 12 February of 2001?
 13 A I believe so.
 14 Q Now, are you familiar with the company Pioneer?
 15 A Yes.
 16 Q Are you familiar with their line of consumer
 17 products?
 18 A Yes.
 19 Q Do you consider yourself or HHTA to be a
 20 competitor of Pioneer?
 21 A In certain product categories, yes.
 22 Q What product categories do you consider yourself
 23 to be a competitor?
 24 A Well, it changes from year to year as each

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1 competitor focuses on different categories.
 2 Most presently we would be a direct competitor
 3 with Pioneer in plasma technology.
 4 **Q Now, is there an intention to sell a plasma**
 5 **product under the name of SuperScan Elite?**
 6 **A Yes, there is.**
 7 **Q And what would the pricing point of that product**
 8 **be at retail?**
 9 **MR. McGRATH:** Let me at this point -- I would
 10 designate this, certainly, as commercially sensitive
 11 information. You can answer it, but it's to be
 12 protected in the record.
 13 **THE WITNESS:** [REDACTED]
 14 **MR. SKOUSEN:** **Q And would that relate to a**
 15 **specific size of plasma?**
 16 **A It could.**
 17 **Q I mean, do you have an idea today as you sit**
 18 **here what the size of that plasma would be that would be**
 19 **sold for \$[REDACTED] at retail?**
 20 **A Yes.**
 21 **Q And what would that size be?**
 22 **A 42 inches.**
 23 **Q Now, does Pioneer sell a 42-inch plasma?**
 24 **A I believe so.**

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1 **Q Would the features be the same in this 42-inch**
 2 **plasma that you would be selling under SuperScan Elite**
 3 **as the features contained in the 42-inch Pioneer**
 4 **product?**
 5 **MR. McGRATH:** I'll object on the grounds of a lack
 6 of foundation. You're assuming he knows all the
 7 features in a Pioneer 42 inch.
 8 But you can answer it, if you can.
 9 **THE WITNESS:** Can you restate that question.
 10 **MR. SKOUSEN:** Can you read it back.
 11 (From the record above, the reporter read
 12 the following:
 13 "Q Would the features be the same in this
 14 42-inch plasma that you would be selling
 15 under SuperScan Elite as the features
 16 contained in the 42-inch Pioneer product?")
 17 **THE WITNESS:** I have honestly no idea if the
 18 features would be the same or not.
 19 **MR. SKOUSEN:** **Q Well, I take it there has not been**
 20 **a decision made as to the exact type of product that**
 21 **Hitachi -- well, in this case HHTA would be selling?**
 22 **A That is not correct.**
 23 **Q Okay. There has been a decision made?**
 24 **A Not a final decision. That comes with further**

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1 negotiation with the customer. There are specific cost
 2 elements for each feature that could be or couldn't be
 3 taken in or added in at any time.
 4 **Q I take it that you, in discussing the sale of a**
 5 **42-inch plasma to a national retail account, I take it**
 6 **that you have made a proposal to that customer, correct?**
 7 **A That is correct.**
 8 **Q And that proposal contained product**
 9 **specifications, correct?**
 10 **A General specifications that can be modified at**
 11 **any time.**
 12 **Q So -- and the state -- Has the customer**
 13 **responded to that?**
 14 **A They have responded.**
 15 **Q And what was their response?**
 16 **A It's still under discussion.**
 17 **Q Well, did they have any specific response to the**
 18 **specifications that HHTA proposed?**
 19 **A In general, yes.**
 20 **Q Okay. Let's go back to the specific proposal.**
 21 **So I take it there was a specific proposal made to this**
 22 **customer relating to the 42-inch plasma display,**
 23 **correct?**
 24 **A Yes, we have submitted a laboratory sample**

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1 carrying our logo. It is under evaluation as we speak.
 2 **Q And it has on it some type of trademark?**
 3 **A Correct.**
 4 **Q And what mark is that?**
 5 **A Currently SuperScan.**
 6 **Q Okay. And have you submitted any type of**
 7 **product with the mark SuperScan Elite?**
 8 **A Not on the product itself, but in concept, yes.**
 9 **Q Like with a drawing?**
 10 **A Not specifically a drawing.**
 11 **Q Well, how has it been submitted, then?**
 12 **A Verbally.**
 13 **Q And what was that -- How would you describe that**
 14 **description?**
 15 **A SuperScan Elite.**
 16 **Q In some sort of -- I mean, you didn't -- so what**
 17 **you're saying is you have not submitted any type of**
 18 **actual picture?**
 19 **A No.**
 20 **Q You just said we would have a product line that**
 21 **would be SuperScan Elite?**
 22 **A Correct.**
 23 **Q And were you going to have other product lines**
 24 **with SuperScan such as SuperScan Pro?**

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1 A No, we're not discussing anything of SuperScan
2 Pro. We're discussing SuperScan Elite and SuperScan as
3 a family brand of product.
4 Q Any other products using the word SuperScan?
5 A Many of those, yes, we've discussed today.
6 Q I guess I don't understand your answer. I'm
7 asking whether you have any sort of sub brands using the
8 word SuperScan?
9 A No. SuperScan is, again, the family mark which
10 we own a registration for and we have registered
11 SuperScan Elite as a step-up brand or a combination of
12 the family brand.
13 Q So, in other words, the present discussion right
14 now relates to only two marks?
15 A Uh-huh.
16 Q And that would be SuperScan and SuperScan Elite?
17 A Yes.
18 Q Now, are there discussions relating to
19 specifically a 42-inch plasma that would bear both
20 SuperScan and SuperScan Elite?
21 A Yes.
22 Q Okay. What would the differences be between the
23 SuperScan 42-inch plasma and the SuperScan Elite 42-inch
24 plasma?

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1 A Again, that's still under discussion.
2 Technically speaking it could be a variation of many
3 different things. It could be resolution, it could be
4 with a tuner, without a tuner. It could be with
5 speakers, without a speaker.
6 But we are marketing this as a plasma TV
7 including a tuner, but it doesn't mean to hit a certain
8 price point that we would not negotiate or reach a final
9 conclusion of a different final formal.
10 The key is the price point that we are trying
11 to hit.
12 Q And the price point is indicated from your
13 customer, I take it?
14 A No, it's indicated from the market.
15 Q I see. And so is this something that you and
16 your customer have agreed on?
17 A In principle, yes.
18 Q And when you say it came from the market, how is
19 it derived from the market?
20 A We could talk all day about that.
21 Q Well, I don't want to talk all day, but maybe
22 you could give me a short synopsis?
23 A In this category specifically, plasma is a new
24 technology rapidly becoming much more important to key

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1 it result in the creation of any documents?
 2 A Yes, it would have been, again, like internal
 3 e-mails, basically, on that subject.
 4 Q Going back and forth among --
 5 A Uh-huh.
 6 Q -- people at HHTA?
 7 A Yes, uh-huh.
 8 Q As well as some of the customers?
 9 A Yes.
 10 Q And was this market research specifically
 11 directed to doing, for example, a 42-inch plasma under
 12 the name SuperScan Elite?
 13 A Yes.
 14 Q Do you know where those documents would be?
 15 A Again, it would be dependent upon which of my
 16 staff happened to be in that communication. I may have
 17 been copied on it, I may have not, but it would be
 18 basically filed as an e-mail exchange.
 19 Q And would that all be at the Schaumburg
 20 headquarters?
 21 A Or Tokyo.
 22 Q So, in other words, there would be e-mails
 23 either resident at Schaumburg or Tokyo?
 24 A I think so.

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1 potential customers regarding the \$ price point,
 2 did that take place at the end of 2001?
 3 A Later in the time frame, I think.
 4 Q Probably in 2002?
 5 A Yes.
 6 Q Are you aware of any documents that would
 7 indicate an intention to sell SuperScan Elite products
 8 for 2001?
 9 A No, I'm not aware.
 10 Q Does that mean you believe no documents exist
 11 that would be dated 2001 for the sale of a product or
 12 potential sale of a product bearing the name SuperScan
 13 Elite?
 14 MR. McGRATH: I'll object to the form of the
 15 question as vague and confusing.
 16 THE WITNESS: I can answer that at that time I
 17 believe we would have been discussing the family brand
 18 of SuperScan. We may not have at that time specifically
 19 discussed or reported Elite as an addition to the family
 20 brand, but I'd have to look back in history.
 21 I think, again, what I want to make sure you
 22 understand is that we have never had any intention or
 23 discussion to use the brand Elite by itself. It has
 24 been and will continue to be SuperScan Elite basically

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1 Q And was it restricted to e-mails?
 2 A Yes, and some attachments in certain cases.
 3 Q And what would those attachments consist of?
 4 A Could be a separate Word document, a separate
 5 Excel document or PowerPoint it could be.
 6 Q In the form of some type of spreadsheet?
 7 A Possibly.
 8 Q And what would be on the spreadsheet?
 9 A Different models of brand at certain price
 10 points that we were confirming and discussing.
 11 Q Would there be any -- would any Pioneer product
 12 be included on the spreadsheet, to your knowledge?
 13 A No, I don't think so.
 14 Q But it would include other companies that you
 15 considered the competitors at this \$ price point?
 16 A For those specific customers that we are
 17 targeting, yes.
 18 Q And one company I would assume would include
 19 Gateway?
 20 A No, we are not targeting Gateway.
 21 Q No, I mean as a competitor.
 22 A Yes, it would include Gateway as part of the
 23 market evaluation.
 24 Q Now, was this first discussion with your

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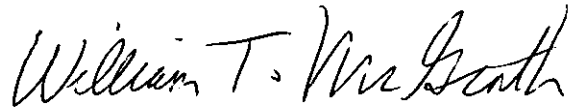
1 as all one logo. I don't know if that answers the
 2 question.
 3 MR. SKOUSEN: Q Well, let me just follow up. I
 4 think it does.
 5 In other words, your testimony would be that
 6 during 2001 the entire discussion was regarding using
 7 SuperScan as a family mark, correct?
 8 A Yes.
 9 Q And that any discussions about having a sub
 10 brand, if you will, that included the name SuperScan
 11 Elite most likely took place in 2002?
 12 A I think that's correct.
 13 Q And you believe that there is documentation that
 14 would bear that out, is that correct?
 15 A Yes, in the form of everyday business
 16 conversation, either internally or in certain cases
 17 externally.
 18 Q In other words, what we talked about before,
 19 e-mails and minutes of the meetings would indicate what
 20 the discussion was about, correct?
 21 A Yes, I believe so.
 22 Q And your best recollection is that would
 23 indicate it was a discussion only about SuperScan during
 24 2001?

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<p>1 A Yes.</p> <p>2 Q So I take it it's fair to say that it wasn't</p> <p>3 until 2002 that you actually begin having concrete</p> <p>4 discussions with your potential customers about branding</p> <p>5 a SuperScan mark?</p> <p>6 A No, we probably had discussions with several</p> <p>7 different people on SuperScan as a what if or would you</p> <p>8 think we could do this type of thing.</p> <p>9 Now, we don't approach a customer with an idea</p> <p>10 until we're pretty sure that we could do that. And I,</p> <p>11 to be honest with you, am not exactly sure when we filed</p> <p>12 either our SuperScan or our SuperScan Elite.</p> <p>13 But before we talked to a customer even as a</p> <p>14 what if we did have discussions internally with the</p> <p>15 predecessor who I replaced, Mr. Nagao, with respect to</p> <p>16 could we offer that brand.</p> <p>17 And so I'm not sure of the time line exactly</p> <p>18 when we did that. I'd have to check.</p> <p>19 Q But the documents, I take it, would explain or</p> <p>20 give you --</p> <p>21 A I think so.</p> <p>22 Q Do you think that's mainly e-mails?</p> <p>23 A Yes.</p> <p>24 Q They would be the best source for trying to</p> <p style="text-align: right;">74</p>	<p>1 how we were going to position this broad array of</p> <p>2 product at the high end, at the mid, at the low.</p> <p>3 Q The Sylvania product, is that a middle brand</p> <p>4 product?</p> <p>5 A Good question. Depends on who you ask whether</p> <p>6 it would be so-called tier two -- you know, Sony,</p> <p>7 Hitachi, Pioneer are tier one, Mitsubishi. Tier two</p> <p>8 could be Magnavox, it could be RCA, it could be Zenith,</p> <p>9 and Sylvania could fall into the tier two or it could</p> <p>10 fall into the bottom, tier three.</p> <p>11 Q Who is in the tier three that you would</p> <p>12 consider?</p> <p>13 A Tier three is brands like Apex today, brands --</p> <p>14 and, again, it depends on the category of product. But</p> <p>15 in basic general terms, Apex would be a tier three,</p> <p>16 Sansui would be tier three, Emerson would be tier three.</p> <p>17 There are many others, some strange Chinese names that</p> <p>18 you see. There is many others. I just can't think of</p> <p>19 them right now.</p> <p>20 Q With respect to the 42-inch plasma, what's your</p> <p>21 best recollection of when the initial proposal was made</p> <p>22 to the first potential customer?</p> <p>23 A Proposal would be Q3 of 2002, I guess.</p> <p>24 Q And prior to that time I take it that HHTA had</p> <p style="text-align: right;">76</p>
<p>1 devise some type of time line, correct?</p> <p>2 A I believe so, yes, I believe so.</p> <p>3 Q Okay. Now, during 2001 had you reached a</p> <p>4 concrete decision about specific products that you now</p> <p>5 were going to approach the customers?</p> <p>6 A Yes and no. I mean, we have this list, this</p> <p>7 broad range of consumer entertainment products. So I</p> <p>8 would have to say, yes, we had reached the decision,</p> <p>9 again, in a branding situation having Hitachi brand at</p> <p>10 the top. We also are involved in another brand called</p> <p>11 Sylvania in this level of product. And the idea is we</p> <p>12 need somewhere in between there a third brand, if you</p> <p>13 will.</p> <p>14 So I would have to answer your question that we</p> <p>15 had already made our mind up at that time that it could</p> <p>16 be this combo, combo TV combo category. We need to</p> <p>17 focus on new technology such as LCD and plasma, as well</p> <p>18 and how does that fit in. So there were a lot of</p> <p>19 discussion. So we made the basic decision to go forward</p> <p>20 virtually with where -- what type of product it was</p> <p>21 going to be.</p> <p>22 Q It was more the channels of trade that you were</p> <p>23 going to use for distribution, is that right?</p> <p>24 A No, I would say more the brand positioning of</p> <p style="text-align: right;">75</p>	<p>1 to spend some time determining whether it could make</p> <p>2 that price point?</p> <p>3 A Yes.</p> <p>4 Q I assume the chronology was first to do the</p> <p>5 market research as far as what the price point was, is</p> <p>6 that right?</p> <p>7 A Yes, after we decided that we would use</p> <p>8 SuperScan family of brand, that was first. And then,</p> <p>9 okay, where is the market today and what is our brand</p> <p>10 strategy to implement that. And then can we make it at</p> <p>11 that cost that's acceptable for the customer or not.</p> <p>12 Q Prior to the decision to use the SuperScan</p> <p>13 family brand, was there then a discussion about having</p> <p>14 to have this alternative brand position first?</p> <p>15 A Yes.</p> <p>16 Q And what tier is the SuperScan family to occupy</p> <p>17 or tiers, as the case may be?</p> <p>18 A Upper tier three or lower tier two, somewhere in</p> <p>19 there.</p> <p>20 Q So prior to deciding to use the SuperScan</p> <p>21 family, I take it there was discussion about wanting to</p> <p>22 have a tier three product, in other words?</p> <p>23 A Yes, because the price point dictates that level</p> <p>24 of brand positioning.</p> <p style="text-align: right;">77</p>

CERTIFICATE OF MAILING

I hereby certify that the foregoing APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER is being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" in an envelope addressed to the Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202, BOX TTAB, on May 28, 2004.

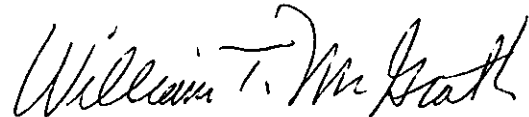


One of the Attorneys for Applicant

CERTIFICATE OF SERVICE

This is to certify that on May 28, 2004, a copy of the foregoing APPLICANT'S REPLY TO OPPOSER'S OPPOSITION TO MOTION FOR PROTECTIVE ORDER was served on counsel for Opposer via U.S. mail at the following address:

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